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May 19, 2011

The Honorable Andrew L. Carter
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Britt v. Aries Financial, et. al.*, 09-Civ-2398 (RJD) (ALC))

Dear Judge Carter:

As counsel for Plaintiff Herman Britt, we write in response to the Court's Order of this morning adjourning the oral argument on Plaintiff's Motion to Compel Production of Documents and for Spoliation Sanctions ("Motion"), which had been scheduled for tomorrow morning, May 20 at 10:00 a.m. We respectfully request that the Court reconsider its Order and proceed with oral argument as scheduled as to Defendant Aries Financial LLC. We received no notice of any request by Mr. Kahan to postpone the hearing, although Mr. Kahan had informed counsel for Plaintiff of his intended surgery several weeks ago and his intent to request permission to participate in the argument by telephone. Counsel from the Center for Responsible Lending, who will be arguing the Motion, have already incurred significant travel costs. They were already en route to New York when the Court entered its Order and have booked non-refundable hotel rooms. We perceive no basis for a postponement of the hearing with respect to Defendant Aries Financial LLC since the factual underpinnings of the Motion to Compel claims against Aries are completely different from those underlying the claims against Mr. Kahan.

Plaintiff received no notice of any motion or request by Mr. Kahan to postpone tomorrow's scheduled hearing, and therefore are unable to assess the basis for Mr. Kahan's request. However, Mr. Kahan has known about his scheduled elective surgery for weeks, at the very minimum. On May 3, Mr. Kahan contacted counsel for Plaintiff and informed us that he was scheduled to have hip replacement surgery on May 11, 2011, and that he would be in the hospital for several days, followed by six to eight weeks of recuperation at home. Mr. Kahan sought Plaintiff's consent to either postpone the hearing or to allow him to participate by phone. (*See* Email from Douglas Kahan to Fred Sosinski, Jenn Light, Karuna Patel, Jennifer Sinton, and Nina Simon, May 3, 2011 at 4:01 p.m., *attached hereto as Ex. A.*) Plaintiff consented to Mr. Kahan's participation by phone, but did not agree to postpone the hearing in

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light of the significant delays that had already occurred with respect to discovery in this case. (*See* Ex. A, Email from Jennifer Sinton to Douglas Kahan, May 3, 2011 at 4:56 p.m.) Plaintiff heard nothing more from Mr. Kahan on the matter, nor did he submit any filing with the Court.

Mr. Kahan's last minute notification to the Court that he is unable to attend argument set for tomorrow should not be a basis for cancelling argument against Aries. To do so would be unduly prejudicial to Plaintiff and his counsel. Plaintiff respectfully requests that the Court reconsider its Order adjourning oral argument to June 20, except with respect to Mr. Kahan. We request that oral argument on the Motion go forward with respect to Defendant Aries Financial LLC.

I contacted Mr. Sosinsky by telephone and email to obtain his consent to this request, but I have been unable to reach him.

Plaintiff reserves the right to seek costs from Mr. Kahan for any unnecessary travel and attorney fees resulting from the adjourned hearing.

Respectfully submitted,

/s/

Jennifer Sinton

cc by ECF:

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